

# **Exhibit F**

## **Preston Transcript**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

-----X  
WALTER W. THIEMANN, et al.,  
Plaintiffs,  
vs. Case No. C-1-00-793  
OHSL FINANCIAL CORP., et al.,  
Defendants.  
-----X

DEPOSITION OF CANDACE L. PRESTON  
New York, New York  
Friday, October 22, 2004

Reported by:  
Thomas R. Nichols, RPR  
JOB NO. 165884

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 6                   October 22, 2004 7                   9 a.m. 8 9                   Deposition of CANDACE L. PRESTON, 10 held at the offices of Esquire 11 Deposition Services, 216 East 45th 12 Street, New York, New York, pursuant to 13 Notice, before Thomas R. Nichols, a 14 Registered Professional Reporter and a 15 Notary Public of the State of New York. 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1                   Preston 2                   (Preston Exhibit 1, Notice, 3 premarked for identification, this date.) 4 CANDACE PRESTON, having 5 been duly sworn by a Notary Public, was 6 examined and testified as follows: 7 EXAMINATION BY 8 MR. BURKE: 9 Q. Good morning, Ms. Preston. How are 10 you? 11 A. Fine, thank you. 12 Q. My name is Jim Burke. I am 13 representing the Provident and OHSL defendants 14 in this matter and we're here in the case of 15 Thiemann versus OHSL Financial Corporation, 16 which is pending in the federal court in 17 Cincinnati, Ohio. 18 You've been deposed before, haven't 19 you? 20 A. I have. 21 Q. So I don't have to give you the 22 usual admonitions. I will suggest to you that 23 as you know you're testifying as an expert 24 witness. 25 We have received a copy of your</p>
<p style="text-align: right;">Page 3</p> <p>1 2 APPEARANCES: 3 4 GENE MESH &amp; ASSOCIATES 5 Attorneys for Plaintiffs 6 2605 Burnet Avenue 7 Cincinnati, Ohio 45219-2502 8 BY: MICHAEL G. BRAUTIGAM, ESQ. 9 10 KEATING, MUETHING &amp; KLEKAMP PPL 11 Attorneys for Defendants OHSL Financial 12 Corp. and Provident 13 1400 Provident Tower 14 One East Fourth Street 15 Cincinnati, Ohio 45202-3752 16 BY: JAMES E. BURKE, ESQ. 17 18 SCHROEDER MAUNDRELL BABIERE &amp; POWERS 19 Attorneys for Defendants Dinsmore &amp; Shohl 20 and Clifford Roe 21 11935 Mason Road, Suite 110 22 Cincinnati, Ohio 45249 23 BY: ROBERT S. HILLER, ESQ. 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1                   Preston 2 expert report and we'll be talking about that 3 today. 4 To the extent after today you do any 5 more work, conduct additional review of 6 materials, reach any more conclusions, we want 7 to know about that, because the purpose of an 8 expert deposition is to understand precisely 9 what you're going to testify to at trial. 10 So to the extent you review 11 additional depositions of other experts or 12 other materials, please advise Mr. Brautigam 13 so he can tell us, and if necessary we may 14 want to depose you again on that additional 15 work. Is that all right? 16 A. I understand. 17 Q. Will you do that, if you do 18 additional work, notify Mr. Brautigam? 19 A. I will. 20 Q. Let me show you what we have marked 21 as Preston Deposition Exhibit 1. And this is 22 a notice of deposition that was served earlier 23 this week. 24 Did you get a chance to see that? 25 A. I did.</p>

Page 6

1 **Preston**  
2 Q. This is being taken by notice and  
3 agreement. There were some document requests  
4 in there. In discussions with Mr. Brautigam  
5 though I made it clear that I wasn't looking  
6 for you to regurgitate your whole file and  
7 bring it here.  
8 I was just looking to see whether or  
9 not you had materials that either were not  
10 depositions, pleadings or otherwise made part  
11 of the public record in this case already that  
12 related to your testimony.  
13 Do you have any such materials?  
14 **A. I do.**  
15 Q. Would you at least show me what you  
16 have?  
17 **A. Sure.**  
18 MR. BRAUTIGAM: Jim, for the record,  
19 I want to point out that I believe this  
20 notice in addition to being completely  
21 unnecessary, is intentionally misleading  
22 for the reasons that I stated yesterday.  
23 MR. BURKE: That's fine.  
24 Q. Do you want to generally describe  
25 for me what this consists of?

Page 7

1 **Preston**  
2 **A. This consists -- if you don't mind,**  
3 **I'm just going to open it and we'll go through**  
4 **it so we're not --**  
5 Q. Please do.  
6 **A. This consists of articles regarding**  
7 **OHSI, Provident, articles regarding investors**  
8 **or directors leading or opposing mergers.**  
9 **It's press releases regarding the**  
10 **companies here. Some of the academic articles**  
11 **that I cited in my report are here. Backup**  
12 **data for a regression analysis I did is here.**  
13 Q. That's great. The articles  
14 regarding investors or directors leading and  
15 opposing mergers, is that information that was  
16 cited in your report?  
17 **A. There may be other articles beyond**  
18 **which was cited.**  
19 MR. BURKE: We might as well get  
20 everything out of the way at once. Let  
21 me ask the reporter to mark that as  
22 Preston 2, and this is Preston 3.  
23 (Preston Exhibit 2, Preliminary  
24 Expert Report of Candace L. Preston, CFA,  
25 dated May 1, 2002, marked for

Page 8

1 **Preston**  
2 identification, this date.)  
3 (Preston Exhibit 3, Preliminary  
4 Expert Report of Candace L. Preston, CFA,  
5 dated August 30, 2004, marked for  
6 identification, this date.)  
7 Q. Can you identify for me what Preston  
8 Exhibit 2 is?  
9 **A. Preston Exhibit 2 is a report that I**  
10 **submitted in this matter in May of 2002.**  
11 Q. What is Preston Exhibit 3?  
12 **A. Preston Exhibit 3 is a report in**  
13 **this matter that I submitted in August of this**  
14 **year.**  
15 Q. Am I correct that Preston Exhibit 3,  
16 the August 30 report, supersedes Exhibit 2 and  
17 contains the latest most up-to-date summary of  
18 your opinions in this matter?  
19 **A. That's correct.**  
20 Q. Were there matters on which you  
21 opined in Preston Exhibit 2 that you later  
22 learned were no longer issues in this case?  
23 **A. Yes.**  
24 Q. For example, there was something  
25 about the staleness of the fairness opinion.

Page 9

1 **Preston**  
2 Do you remember that?  
3 **A. I do.**  
4 Q. Do you remember there was also an  
5 issue regarding -- I'm blanking, excuse me --  
6 change in control contracts?  
7 **A. I don't recall. Maybe.**  
8 Q. Do you remember at some point in  
9 time some of the opinions you expressed in  
10 Preston Exhibit 2 were mooted by virtue of the  
11 fact that claims relating to those factual  
12 issues were dismissed?  
13 **A. That's correct.**  
14 Q. What is your home address, ma'am?  
15 **A. 152 Westcott Road, W-e-s-t-c-o-t-t,**  
16 **Princeton, New Jersey.**  
17 Q. And your business address is at FMA  
18 on the card you gave us?  
19 **A. It is, yes.**  
20 Q. Just for the record, what is that  
21 business address?  
22 **A. 600 Alexander Road, Princeton,**  
23 **New Jersey.**  
24 Q. You're presently employed by  
25 Financial Markets Analysis, LLC?

3 (Pages 6 to 9)

Page 10

1 Preston  
 2 **A. Correct.**  
 3 Q. Can you give me a description of  
 4 what that company is and what it does?  
 5 **A. Financial Markets LLC is a valuation**  
 6 **company. We do valuations regarding fairness**  
 7 **opinions, options that may be issued in**  
 8 **compensation or valuations prior to companies**  
 9 **going public and in litigation support such as**  
 10 **this.**  
 11 Q. How big a company is Financial  
 12 Markets in terms of the number of employees?  
 13 **A. Technically I suppose there's four**  
 14 **employees, but earlier you asked me if I was**  
 15 **employed by them. I am not really. I am an**  
 16 **owner, but I'm not employed by them.**  
 17 **So there are four employees, three**  
 18 **owners. Seven professionals.**  
 19 Q. Do you work for them on sort of an  
 20 independent contractor basis?  
 21 **A. Correct.**  
 22 Q. Are you one of the founders of  
 23 Financial Markets?  
 24 **A. I am.**  
 25 Q. When did you found that company?

Page 11

1 Preston  
 2 **A. 2000.**  
 3 Q. And who were the partners? Who were  
 4 the other two owners?  
 5 **A. Michael Marek, M-a-r-e-k, and Bjorn,**  
 6 **B-j-o-r-n, Steinholt. S-t-e-i-n-h-o-l-t.**  
 7 Q. How much of the business of  
 8 Financial Markets Analysis is in litigation  
 9 support as opposed to the other services you  
 10 talked about?  
 11 **A. Probably about 75 percent.**  
 12 Q. Do all seven of the individuals that  
 13 are involved with the company provide expert  
 14 testimony?  
 15 **A. No.**  
 16 Q. Do the three owners?  
 17 **A. Yes.**  
 18 Q. And the other four employees are  
 19 more of in a support role?  
 20 **A. Yes.**  
 21 Q. If you know, how much of the  
 22 litigation support done by Financial Markets  
 23 Analysis is on the plaintiff's side versus the  
 24 defense side?  
 25 **A. It varies from -- over time.**

Page 12

1 Preston  
 2 **Recently it's probably been 60/65 percent for**  
 3 **plaintiffs, 35 to 40 percent for defendants.**  
 4 Q. 35 to 40 percent?  
 5 **A. Yes, I think those add up. Yes.**  
 6 Q. If you look at -- when I refer to  
 7 your report, I'll be referring to Preston  
 8 Exhibit 3, which I think is sort of the  
 9 current version of your testimony.  
 10 If you would, turn to your resume.  
 11 **A. Yes.**  
 12 Q. Which is I guess it's Exhibit A to  
 13 your report which is Preston 3. As you sit  
 14 here today, to the best of your knowledge is  
 15 this accurate and complete?  
 16 **A. It is.**  
 17 Q. At the bottom it summarizes your  
 18 educational history. Those accurately reflect  
 19 the degrees you have earned?  
 20 **A. That's true.**  
 21 Q. Have you received any training,  
 22 educational training, even though it didn't  
 23 result in a degree, subsequent to 1985?  
 24 **A. I got my charter subsequent to that.**  
 25 Q. That's down below, professional

Page 13

1 Preston  
 2 designations, "Chartered Financial Analyst"?  
 3 **A. Yes.**  
 4 Q. Tell me what that is.  
 5 **A. A chartered financial analyst is the**  
 6 **term used to refer to somebody who earns a**  
 7 **charter from what used to be the AIMR. It's**  
 8 **recently -- that was the Association for**  
 9 **Investment Management and Research. It's**  
 10 **changed its name to something easier, the**  
 11 **Institute of Chartered Financial Analysts now.**  
 12 **But it was, it's a, you achieve it**  
 13 **through a course of study of over three years**  
 14 **where you take three successively more**  
 15 **rigorous exams. Having passed those, you**  
 16 **receive the designation of Chartered Financial**  
 17 **Analyst.**  
 18 Q. And in general, what does the course  
 19 of study for, to become a chartered financial  
 20 analyst focus on?  
 21 **A. Finance.**  
 22 Q. Does it deal with investment  
 23 management?  
 24 **A. Yes.**  
 25 Q. Investment advisory services?

4 (Pages 10 to 13)

Page 14

1 Preston

2 **A. Yes.**

3 Q. Have you ever performed professional

4 investment management or investment advisory

5 services?

6 **A. No.**

7 Q. What aspect of your professional

8 work does your CFA training relate to?

9 **A. All the valuation work I do.**

10 Q. I take it you're not an accountant

11 or a CPA.

12 **A. I am not.**

13 Q. Have you ever taken courses in that

14 area, you know, that were heading towards

15 obtaining a CPA --

16 **A. No.**

17 Q. -- designation?

18 MR. BRAUTIGAM: Objection to the

19 form of the question.

20 Q. You're not a lawyer?

21 **A. No.**

22 Q. Have you sat on the board or on the

23 audit committee of a public company?

24 **A. No.**

25 Q. Have you sat on the board of a

Page 15

1 Preston

2 privately owned company?

3 **A. I don't think so.**

4 MR. BRAUTIGAM: Off the record.

5 (Discussion off the record.)

6 Q. Let's talk a little bit about your

7 employment history, starting with NewMarkets

8 in 1980.

9 **A. Yes.**

10 Q. Tell me a little bit about what

11 NewMarkets was.

12 **A. Well, it's summarized pretty much**

13 **right here. It was a management consulting**

14 **firm. We specialized in market and business**

15 **planning. It was done for new ventures, some**

16 **turnaround.**

17 **We developed business plans,**

18 **projections and marketing plans for either**

19 **divisions of big companies, small companies.**

20 Q. What was your position at

21 NewMarkets?

22 **A. I was a senior consultant.**

23 Q. What specifically did your work

24 focus on?

25 **A. I didn't develop marketing plans.**

Page 16

1 Preston

2 **But I did all the valuation work and all the**

3 **business planning.**

4 Q. In connection with your valuation

5 work are there standard treatises, guidelines,

6 generally accepted methodologies that you rely

7 upon in performing valuation work?

8 MR. BRAUTIGAM: Objection.

9 **A. Yes.**

10 Q. What would those be?

11 **A. Well, it would depend on what the**

12 **purpose one was performing such valuation work**

13 **for.**

14 Q. In general, what treatises do you

15 find authoritative?

16 **A. In general one would look at in**

17 **performing valuation work where you were doing**

18 **a bottoms-up valuation, one would do a**

19 **discounted cash flow.**

20 **Depending on the business, you might**

21 **be looking at certain multiples of, you know,**

22 **if it was a real estate business, it might be**

23 **rent. It might be a lot of different things.**

24 **It would depend on the situation.**

25 Q. Frequently an investment banker

Page 17

1 Preston

2 analyses of transactions and mergers, you'll

3 have a discounted cash flow analysis. You'll

4 have an asset analysis.

5 Are you familiar with those types of

6 valuations as well?

7 **A. Yes.**

8 Q. How big a company was NewMarkets?

9 **A. It was about eight people.**

10 Q. And why did you leave them in 1985?

11 **A. I had a great opportunity at**

12 **Princeton Venture Research.**

13 Q. Explain for me what Princeton

14 Venture Research was.

15 **A. Princeton Venture Research was a**

16 **small investment banking and consulting firm.**

17 **I started there as a senior analyst and became**

18 **executive vice president over that time**

19 **period.**

20 **And we did things very similar to**

21 **what I now do at Financial Markets Analysis.**

22 Q. Was this the first time you began to

23 do litigation support when you went to

24 Princeton Venture Research?

25 **A. It was.**

Page 18

1 **Preston**  
2 Q. Were you one of the founders of  
3 Princeton Venture Research?  
4 **A. No.**  
5 Q. How large a group was that in terms  
6 of people?  
7 **A. When I joined it it was probably**  
8 **about five or six and it grew to about fifty.**  
9 Q. What kind of litigation support work  
10 did you do at Princeton Venture Research?  
11 **A. We did work in securities class**  
12 **action, bankruptcies, contract disputes.**  
13 Q. What kind of analyses?  
14 **A. It would depend on the individual**  
15 **situation.**  
16 Q. For example, with your securities  
17 class actions, were you generally doing damage  
18 type analysis or something different?  
19 **A. Generally damage analysis.**  
20 Q. Did you usually do it for the  
21 plaintiff's side or for the defense side?  
22 **A. Usually for the plaintiff's side.**  
23 Q. I know we have got a list of your  
24 cases back here and I don't want to, you know,  
25 draw on your recollection too much or test

Page 19

1 **Preston**  
2 your recollection too much, but while at  
3 Princeton approximately how many securities  
4 class actions were you involved in, rough  
5 order magnitude?  
6 **A. Hundreds.**  
7 Q. Mostly on the plaintiff's side?  
8 **A. Mostly.**  
9 Q. Were you at Princeton Venture  
10 Research when you did your work in connection  
11 with the Antar actions?  
12 **A. I was at Princeton Venture Research**  
13 **when I worked on one of the Antar cases.**  
14 **Subsequently to leaving Princeton Venture**  
15 **Research, the SEC hired me to work on another**  
16 **one of the cases.**  
17 Q. You were at Princeton Venture  
18 Research for thirteen years.  
19 **A. Yes.**  
20 Q. Why did you leave Princeton Venture  
21 Research?  
22 **A. I founded Triumph Partners.**  
23 Q. What was Triumph Partners?  
24 **A. Triumph Partners is again a very**  
25 **similar consulting firm to Financial Markets**

Page 20

1 **Preston**  
2 **Analysis.**  
3 Q. What was the principal focus of your  
4 work at Triumph Partners?  
5 **A. Valuations.**  
6 Q. How much was litigation support?  
7 When you say valuations, do you  
8 include your litigation support work?  
9 **A. Yes.**  
10 Q. OK. How much of your work was in  
11 the litigation support area while you were at  
12 Triumph Partners from '98 to 2000? Just '98,  
13 I'm sorry.  
14 **A. Well, that's when I was working with**  
15 **the SEC. So I would say the vast majority of**  
16 **it.**  
17 Q. Was there a reason why you left  
18 Princeton Venture Research to go with Triumph  
19 Partners? Was it in connection with your SEC  
20 engagement?  
21 **A. No.**  
22 Q. How many people were at Triumph  
23 Partners?  
24 **A. Two.**  
25 Q. You and who else?

Page 21

1 **Preston**  
2 **A. Michael Marek.**  
3 Q. In general, what's Mr. Marek's area  
4 of specialization?  
5 **A. Valuations.**  
6 Q. Similar to yours?  
7 **A. Very similar.**  
8 Q. Ms. Preston, I think you indicated  
9 that while you were at Triumph Partners the  
10 majority of your work was devoted to working  
11 with the SEC on the Antar matter.  
12 **A. Certainly that comprised a**  
13 **significant portion of my time. I don't know**  
14 **as it was the majority of my time, but in**  
15 **trying to be responsive to you, I looked at --**  
16 **well, I know a spent a lot of time on that.**  
17 **So taking that into account, the majority of**  
18 **my time would have been on litigation matters.**  
19 Q. Was this in connection with the SEC  
20 enforcement action against that group of  
21 companies?  
22 **A. There was the -- yes, against the**  
23 **family.**  
24 Q. Did you testify in court in that  
25 matter?

6 (Pages 18 to 21)



Page 22

1 Preston  
 2 A. I did.  
 3 Q. Where was that case pending?  
 4 A. In northern - I don't think it's  
 5 called the northern district of New Jersey.  
 6 If you look at my CV. It might be too long  
 7 ago. The New Jersey district court that sits  
 8 in Newark.  
 9 Q. What was the focus of your testimony  
 10 for the SEC? Was it damage analysis?  
 11 A. Yes. Well, it was the value of the  
 12 Crazy Eddie stock throughout a, I think it was  
 13 a three-year period or something like that.  
 14 Q. And this was the value of the Crazy  
 15 Eddie stock at a time when it had been  
 16 inflated by the activities of the company?  
 17 A. Yes.  
 18 Q. What was the outcome of that  
 19 situation, the SEC action?  
 20 A. It was heard by the judge, Judge  
 21 Ackerman, and he affirmed my valuation.  
 22 Q. Why did you leave Triumph Partners?  
 23 A. I had a great offer. Actually, at  
 24 the time I took the job it was at Patricof  
 25 Capital.

Page 23

1 Preston  
 2 Q. Peppercof (phon)?  
 3 A. Patricof, P-a-t-r-i-c-o-f.  
 4 Q. What was the nature of the offer?  
 5 A. To become a managing director there  
 6 in charge of valuations and special financial  
 7 services.  
 8 Q. Your resume does not list Patricof.  
 9 Can you explain that?  
 10 A. Patricof was Patricof for probably  
 11 about six months and then it was bought by the  
 12 Bank of New York.  
 13 Q. After Patricof was acquired by the  
 14 Bank of New York what was your job title  
 15 there?  
 16 A. The same thing, managing director.  
 17 The job did not change.  
 18 Q. Generally speaking, what was the  
 19 focus of your duties and responsibilities  
 20 while at Bank of New York and Patricof?  
 21 A. Providing fairness opinions,  
 22 valuations and mergers in acquisitions. I  
 23 looked at executive compensation. There was  
 24 some estate planning involved and some  
 25 litigation.

Page 24

1 Preston  
 2 Q. You continued to do some litigation  
 3 support while at Bank of New York?  
 4 A. I did.  
 5 Q. How much of your time was the  
 6 litigation support?  
 7 A. Five to 10 percent.  
 8 Q. The majority of your time was  
 9 devoted to the other tasks you've described?  
 10 A. It was.  
 11 Q. What was the nature of the  
 12 litigation support activities you did at Bank  
 13 of New York?  
 14 A. It was damage analysis.  
 15 Q. For plaintiff or defense? If you  
 16 remember.  
 17 A. I don't remember.  
 18 Q. That's fine. Why did you leave the  
 19 Bank of New York?  
 20 A. It was a two-hour each way commute.  
 21 Q. And after that you formed Financial  
 22 Markets Analysis with your other partners?  
 23 A. I did.  
 24 So it was two hours each way.  
 25 Q. I see. I take it you've never

Page 25

1 Preston  
 2 served in an internal accounting function in  
 3 any of the jobs you held, compiling internal  
 4 financial statements?  
 5 A. I have not.  
 6 Q. Have you ever held a job in internal  
 7 audit, any of that sort?  
 8 A. No.  
 9 Q. Have you ever been retained to  
 10 advise the board of directors of a company in  
 11 connection with merger acquisitions?  
 12 A. At the Bank of New York we certainly  
 13 were.  
 14 Q. Can you give me some examples of  
 15 boards of directors or transactions on which  
 16 you worked?  
 17 A. I worked on the acquisition of Black  
 18 Entertainment Television, BET, by Viacom.  
 19 That would be probably the largest transaction  
 20 I worked on, was three billion dollars.  
 21 On the other end of the spectrum, I  
 22 worked on Electronic Retail Systems in a  
 23 potential sale of the company.  
 24 Q. Were you retained, was Bank of New  
 25 York retained by the board of directors or by

7 (Pages 22 to 25)



<p style="text-align: right;">Page 26</p> <p>1 Preston</p> <p>2 some other entity?</p> <p>3 <b>A. Bank of New York was retained by the</b></p> <p>4 <b>board of directors in each of those</b></p> <p>5 <b>situations.</b></p> <p>6 Q. Did you personally work with the</p> <p>7 boards in those cases?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. In any of your jobs did you function</p> <p>10 in the nature of an investment banker?</p> <p>11 <b>A. Yes. At Bank of New York I</b></p> <p>12 <b>certainly did.</b></p> <p>13 Q. In any of your prior work at the</p> <p>14 various positions you've described have you</p> <p>15 been involved in connection with a restatement</p> <p>16 of public company financial statements?</p> <p>17 THE WITNESS: Would you read the</p> <p>18 question back, please?</p> <p>19 (A portion of the record was read.)</p> <p>20 <b>A. Well, I've certainly in my</b></p> <p>21 <b>litigation-associated work worked with a lot</b></p> <p>22 <b>of different restatements.</b></p> <p>23 Q. Can you give me some examples? I'm</p> <p>24 not asking for a laundry list, just what you</p> <p>25 can think of.</p>	<p style="text-align: right;">Page 28</p> <p>1 Preston</p> <p>2 Preston Exhibit 3.</p> <p>3 Are the cases, the additional cases</p> <p>4 listed on Preston Exhibit 2 also cases in</p> <p>5 which you testified similar to in the manner</p> <p>6 you described?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. OK. That's just a fuller list.</p> <p>9 <b>A. Yes, it obviously is, yes.</b></p> <p>10 Q. I don't want to go into a lot of</p> <p>11 detail, but if we can start on the first page</p> <p>12 of --</p> <p>13 <b>A. Which one?</b></p> <p>14 Q. -- Exhibit B. That the one that's</p> <p>15 in front of you.</p> <p>16 <b>A. Sure.</b></p> <p>17 Q. Tell me a little bit about what you</p> <p>18 did in In Re: Frontier Insurance Group.</p> <p>19 <b>A. Frontier Insurance Group I did</b></p> <p>20 <b>damage testimony.</b></p> <p>21 Q. Is that a securities case?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And you did testify. What kind of</p> <p>24 hearing was it?</p> <p>25 <b>A. It was a, um, it may have been a</b></p>
<p style="text-align: right;">Page 27</p> <p>1 Preston</p> <p>2 <b>A. If I looked at the testimony it</b></p> <p>3 <b>might help. Offhand, I'm involved in some</b></p> <p>4 <b>very large litigations right now that involve</b></p> <p>5 <b>improper financial statements. WorldCom comes</b></p> <p>6 <b>to mind.</b></p> <p>7 Q. What's the nature of the services</p> <p>8 you are providing in connection with the</p> <p>9 WorldCom litigation?</p> <p>10 <b>A. I'm a damage expert. And in the</b></p> <p>11 <b>course of most of my damage testimony,</b></p> <p>12 <b>expertise, it encompasses materiality,</b></p> <p>13 <b>causation, efficiency, things like that. So</b></p> <p>14 <b>all of those.</b></p> <p>15 Q. Materiality, causation. What was</p> <p>16 the third?</p> <p>17 <b>A. Efficiency.</b></p> <p>18 Q. Efficient market analysis.</p> <p>19 <b>A. Right.</b></p> <p>20 Q. Take a look, if we could, at the</p> <p>21 summary of your litigation experience.</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And I think I noticed that on</p> <p>24 Preston Exhibit A there is a longer list that</p> <p>25 goes back farther than what you listed on</p>	<p style="text-align: right;">Page 29</p> <p>1 Preston</p> <p>2 motion to dismiss. It might have been -- I</p> <p>3 don't know. There was a motion to dismiss and</p> <p>4 it also included a Daubert motion on my</p> <p>5 testimony.</p> <p>6 Q. How was that Daubert motion</p> <p>7 resolved?</p> <p>8 <b>A. In favor of me.</b></p> <p>9 Q. How about the next case, In Re:</p> <p>10 Sunglass Hut?</p> <p>11 <b>A. That was a securities case. I gave</b></p> <p>12 <b>damage testimony there. And it involved a --</b></p> <p>13 <b>I'm not sure of the exact allegations in that</b></p> <p>14 <b>case and I'm not going to guess.</b></p> <p>15 Q. That's fine. I don't want you to.</p> <p>16 How about the next, In Re: Real</p> <p>17 Estate Associates Limited Partnership</p> <p>18 Litigation?</p> <p>19 <b>A. That's a -- that was a case where I</b></p> <p>20 <b>gave testimony regarding the fairness of a</b></p> <p>21 <b>fairness opinion.</b></p> <p>22 Q. In other words, you were asked to</p> <p>23 evaluate whether the fairness opinion was</p> <p>24 appropriately rendered?</p> <p>25 <b>A. That's correct, and whether it</b></p>

8 (Pages 26 to 29)

Page 30

1 **Preston**  
2 **included the proper disclosures, was it**  
3 **misleading.**  
4 Q. You did testify at trial in that  
5 case?  
6 A. I did.  
7 Q. What was the outcome of the case, if  
8 you remember?  
9 A. It was a verdict for the plaintiffs.  
10 Q. You were testifying for the  
11 plaintiffs?  
12 A. I was.  
13 Q. Next case?  
14 A. Morgens Waterfall versus DLJ, that's  
15 a securities case, but it was -- it was not a  
16 class action. And it was a case where I did  
17 damage testimony -- or not -- deposition  
18 testimony.  
19 Q. But it related to damages?  
20 A. It did.  
21 Q. What was the nature of the claim?  
22 Was it a churning claim or something like  
23 that?  
24 A. No, it was a claim that -- it was a  
25 securities claim that had to do with the

Page 31

1 **Preston**  
2 **misrepresentation of a -- it involved the**  
3 **company Ameriserv, and Ameriserv had a**  
4 **contract to supply Burger King restaurants,**  
5 **and when they issued bonds they neglected to**  
6 **tell people that Burger King was walking away.**  
7 Q. How about the next case?  
8 A. Jennifer Securities. It's a  
9 securities class action. I gave damages  
10 testimony. I don't know what the -- I don't  
11 remember the claims in it.  
12 Q. That's fine. How about the next  
13 case, Dennis Johnson?  
14 A. Dennis Johnson versus Garden Ridge,  
15 that was a securities class action, a Section  
16 XI case, regarding some nondisclosures in a  
17 proxy. I don't remember more than that.  
18 Q. OK. Is that case still pending?  
19 A. No, it was settled.  
20 Q. How about the Jennifer case, is that  
21 still pending?  
22 A. I think the trial had started. I'm  
23 not sure whether it had started, but it  
24 settled either on the eve of or as the trial  
25 started.

Page 32

1 **Preston**  
2 Q. Understand. How about the next  
3 case, In Re: Alliance Pharmaceuticals?  
4 A. That is a securities class action  
5 based on a takeover.  
6 Q. What was the nature of your  
7 testimony?  
8 A. Damages.  
9 Q. The next case, In Re: One Stop.  
10 A. This is not a securities action.  
11 This is a contract claim. And I worked for  
12 the defendant in this case.  
13 I don't know the disposition of it.  
14 It was held in front of a judge, not a jury.  
15 The judge ruled for the defendants, but then  
16 there was an appeal and then One Stop Realtour  
17 was bankrupt and then Allegiance was bankrupt,  
18 and I don't know what ultimately happened to  
19 it.  
20 Q. In Re: SmarTalk?  
21 A. A securities class action, damage  
22 testimony. Still pending as far as I know.  
23 Q. OK.  
24 A. Oh, I need to correct that. This  
25 was not a class action. It was a securities

Page 33

1 **Preston**  
2 **action. But not a class action. In this case**  
3 **I was working for the plaintiff who was a**  
4 **company that had sold itself and it was -- and**  
5 **then the company who acquired it had a great**  
6 **deal of problems.**  
7 Q. I take it that on this first page  
8 the only testimony in which you testified for  
9 the defendants was the one you mentioned, In  
10 Re: One Stop?  
11 A. I believe that's true, yes.  
12 Q. Let's go over to the next page. In  
13 Re: Corner Finance.  
14 A. Yes.  
15 Q. What was that?  
16 A. That is a securities class action  
17 based on a pyramid scheme.  
18 Q. What was the nature of your  
19 testimony?  
20 A. Valuation damages.  
21 Q. How about Cohen versus Berkshire  
22 Hathaway?  
23 A. That was a class action regarding  
24 the acquisition of MidAmerican Energy and the  
25 inadequate price that was received for shares.

9 (Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1                   Preston</p> <p>2           Q. How about the next, In Re: Laidlaw?</p> <p>3           <b>A. Laidlaw is a securities class action</b></p> <p>4 <b>and I gave damage testimony there.</b></p> <p>5           Q. Is that still pending?</p> <p>6           <b>A. Settled.</b></p> <p>7           Q. The Berkshire Hathaway case, when</p> <p>8 you say inadequate price, was that the nature</p> <p>9 of your testimony, valuation and damages?</p> <p>10          <b>A. Valuation and damages, yes.</b></p> <p>11          Q. All the engagements that you've</p> <p>12 listed on this page and a third, you were at</p> <p>13 FMA when you provided this testimony?</p> <p>14          <b>A. Well, Frontier I wasn't.</b></p> <p>15          Q. Was that at Bank of New York or --</p> <p>16          <b>A. It was at -- I was working for Bank</b></p> <p>17 <b>of New York then.</b></p> <p>18          Q. Right.</p> <p>19          <b>A. The rest I was at FMA.</b></p> <p>20          Q. You have listed eleven cases in</p> <p>21 which you've provided testimony in your role</p> <p>22 at FMA from over the last three years or so.</p> <p>23               In addition to these cases in which</p> <p>24 you provided testimony, roughly speaking</p> <p>25 approximately how many other cases have you</p>	<p style="text-align: right;">Page 36</p> <p>1                   Preston</p> <p>2 on litigation support issues, cases on which</p> <p>3 you're working.</p> <p>4           <b>A. That would be a reasonable estimate.</b></p> <p>5           Q. OK, thank you.</p> <p>6           You are familiar with the phrase</p> <p>7 "event study"?</p> <p>8           <b>A. I just want to add something to</b></p> <p>9 <b>that.</b></p> <p>10          Q. Sure.</p> <p>11          <b>A. When I gave you that number, that</b></p> <p>12 <b>was for the firm. It wasn't for me.</b></p> <p>13          Q. OK. And at any one time roughly</p> <p>14 speaking how many open files will you have?</p> <p>15          <b>A. We share our work, so it's very hard</b></p> <p>16 <b>for me to separate out exactly how many I</b></p> <p>17 <b>might have.</b></p> <p>18          Q. I take it you work full time at FMA?</p> <p>19          <b>A. I do.</b></p> <p>20          Q. Are you familiar with the phrase</p> <p>21 "event study"?</p> <p>22          <b>A. Yes.</b></p> <p>23          Q. Tell me what an event study is.</p> <p>24          <b>A. An event study is a statistical</b></p> <p>25 <b>measurement that involves a regression</b></p>
<p style="text-align: right;">Page 35</p> <p>1                   Preston</p> <p>2 worked on in the past two to three years at</p> <p>3 FMA?</p> <p>4           I am trying to get an understanding</p> <p>5 of how many engagements you had going at a</p> <p>6 time.</p> <p>7           <b>A. At any given time we may have a</b></p> <p>8 <b>hundred engagements on which we're working or</b></p> <p>9 <b>have worked. We probably aren't working on</b></p> <p>10 <b>them at that time.</b></p> <p>11          As you can see, like something in</p> <p>12 Frontier, I gave a deposition in November of</p> <p>13 '98. Two years passed and I didn't do</p> <p>14 anything on it for two years. But that's</p> <p>15 still something that technically we're working</p> <p>16 on. So --</p> <p>17          Q. It would be an open file.</p> <p>18          <b>A. It would be an open file, but it</b></p> <p>19 <b>wouldn't, you know, so I don't know -- I am</b></p> <p>20 <b>trying to be responsive, but I don't know if</b></p> <p>21 <b>that's --</b></p> <p>22          Q. That's perfect.</p> <p>23          <b>A. OK.</b></p> <p>24          Q. Similar to lawyers. At any one time</p> <p>25 you may have as many as a hundred open files</p>	<p style="text-align: right;">Page 37</p> <p>1                   Preston</p> <p>2 analysis. I think I've described it in my</p> <p>3 report probably more artfully than I can do it</p> <p>4 off the top of my head, but it compares a</p> <p>5 dependent variable, which in cases like this</p> <p>6 tends to be a stock price or a security price,</p> <p>7 with an independent variable, which would</p> <p>8 represent the industry or peer group or</p> <p>9 something like that that would be used to</p> <p>10 measure the relationship between the movements</p> <p>11 of the dependent and independent variable.</p> <p>12          Having calculated that relationship</p> <p>13 one can then apply the resultant formula to</p> <p>14 time periods outside the estimation period</p> <p>15 used for that to determine if certain</p> <p>16 movements are statistically significant; that</p> <p>17 is, are beyond what would be the expected</p> <p>18 movement.</p> <p>19          Q. When performing an event study with</p> <p>20 respect to stock price, for example, is it</p> <p>21 fair to say that what you try to do is measure</p> <p>22 one influence on that stock price and</p> <p>23 eliminate other potential variables as</p> <p>24 influencing the stock price or try to isolate</p> <p>25 on a particular influence on the stock price?</p>

Page 38

1 Preston  
 2 MR. BRAUTIGAM: Objection.  
 3 Q. Let me rephrase that. As an event  
 4 study relates to stock price, isn't it true  
 5 that you try to isolate stock price movement  
 6 attributable to one factor and eliminate  
 7 movement attributable to other factors at the  
 8 same time?  
 9 A. You try and understand what's  
 10 causing the movement in the price of a stock,  
 11 and by looking at it vis-a-vis an independent  
 12 variable, you hopefully take into account how  
 13 much of that movement is attributable to that  
 14 independent variable and then understand if  
 15 there is residual movement what causes that.  
 16 Q. Do you view yourself as an expert in  
 17 the financial markets, behavior of financial  
 18 markets?  
 19 A. Yes.  
 20 Q. Do you consider yourself an expert  
 21 in stock price movements?  
 22 A. Yes.  
 23 Q. What field of academic study governs  
 24 the rules and guidelines for conducting event  
 25 studies?

Page 39

1 Preston  
 2 A. I am not aware of a major in event  
 3 studies. I guess it would be statistics. But  
 4 it's an applied statistics. It's not a  
 5 pure -- it goes beyond just the statistics of  
 6 it.  
 7 Q. What in your background, I mean, is  
 8 it your finance background that led you to  
 9 become familiar with performing this type of  
 10 work?  
 11 A. Yes.  
 12 Q. Event studies are done by people in  
 13 the finance field?  
 14 A. Yes.  
 15 Q. What is the output generated when  
 16 one does an event study? What is the data  
 17 output?  
 18 MR. BRAUTIGAM: Objection.  
 19 A. The first data output is a  
 20 regression equation. So that would be the  
 21 mathematical output from doing the regression  
 22 analysis. You get a regression equation.  
 23 Then you apply the regression equation. So  
 24 those are the two mathematical.  
 25 Q. One of the things I heard you

Page 40

1 Preston  
 2 describe as being among the materials you  
 3 brought with you here today is the data that  
 4 you generated in connection with the event  
 5 study described in your report.  
 6 A. Correct.  
 7 Q. Is all that data in that stack of  
 8 materials?  
 9 A. Yes, I think that my -- well, the  
 10 regression equation is in the report.  
 11 Q. OK.  
 12 A. And the backup prices that I used  
 13 for the independent variable and the variable  
 14 are here.  
 15 Q. OK. We talked quite a bit about  
 16 your prior testimonial experience.  
 17 Have you ever been qualified as an  
 18 expert to provide testimony on the conduct and  
 19 the activities of boards of directors?  
 20 A. I don't recall.  
 21 Q. You don't recall being qualified as  
 22 such?  
 23 A. I don't recall.  
 24 Q. Have you ever been qualified as an  
 25 expert in connection with SEC disclosures,

Page 41

1 Preston  
 2 preparation of SEC documents?  
 3 A. I was certainly qualified when I  
 4 testified in Real Estate Associates to talk  
 5 about the fairness opinion, and actually I  
 6 talked about all of the registration materials  
 7 and all the information in the registration  
 8 materials. So I was qualified there.  
 9 Q. Have you ever provided testimony in  
 10 connection with a proxy statement?  
 11 A. Yes.  
 12 Q. On any of the matters that we have  
 13 just gone over, did any of those involve a  
 14 proxy statement?  
 15 A. Real Estate Associates did for sure.  
 16 Q. OK.  
 17 Have you ever been qualified as an  
 18 expert and provided testimony regarding  
 19 shareholder behavior?  
 20 A. In Real Estate Associates. May have  
 21 been other times, but I remember that one for  
 22 sure.  
 23 Q. Have you previously done expert  
 24 witness work for Mr. Brautigam?  
 25 A. No.

11 (Pages 38 to 41)

<p style="text-align: right;">Page 50</p> <p>1 <b>Preston</b></p> <p>2 Q. Do you know how much time she has</p> <p>3 devoted to this?</p> <p>4 <b>A. She has probably devoted more time</b></p> <p>5 <b>than I have, and I would guess therefore that</b></p> <p>6 <b>I've probably devoted somewhat less than a</b></p> <p>7 <b>hundred hours.</b></p> <p>8 Q. How much have you or your firm</p> <p>9 billed plaintiffs in this matter?</p> <p>10 <b>A. A little over \$50,000.</b></p> <p>11 Q. And has that been paid?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Other than what is described in here</p> <p>14 in terms of some of the materials you've</p> <p>15 reviewed, which we'll get into, did you have</p> <p>16 any other meetings or conferences in</p> <p>17 connection with your engagement that helped</p> <p>18 direct you in terms of what you were being</p> <p>19 requested to do?</p> <p>20 <b>A. Well, the request is pretty</b></p> <p>21 <b>straightforward. So in terms of what I was</b></p> <p>22 <b>being requested to do, someplace following the</b></p> <p>23 <b>decision by the court that mooted several of</b></p> <p>24 <b>the claims, and I've certainly talked to</b></p> <p>25 <b>Mr. Brautigam and received the new complaint.</b></p>	<p style="text-align: right;">Page 52</p> <p>1 <b>Preston</b></p> <p>2 analysis that was cast aside?</p> <p>3 <b>A. No.</b></p> <p>4 Q. That's what I'm looking at.</p> <p>5 <b>A. No, not at all.</b></p> <p>6 Q. There was no major analytical work</p> <p>7 that you did that was ultimately left out.</p> <p>8 <b>A. No. I was originally retained to do</b></p> <p>9 <b>this. This was the scope of my original</b></p> <p>10 <b>retention. That's all I have done.</b></p> <p>11 Q. Thank you. Is there any work that</p> <p>12 remains in process?</p> <p>13 <b>A. I don't believe so.</b></p> <p>14 THE WITNESS: Let's take a brief</p> <p>15 break here.</p> <p>16 MR. BURKE: That's wonderful.</p> <p>17 (A recess was taken.)</p> <p>18 MR. BRAUTIGAM: Can we clarify</p> <p>19 discovery is continuing and Ms. Preston</p> <p>20 may be given further materials?</p> <p>21 MR. BURKE: That's fine. No problem</p> <p>22 at all.</p> <p>23 By MR. BURKE:</p> <p>24 Q. To the extent you get further</p> <p>25 materials, alters your opinions or you come up</p>
<p style="text-align: right;">Page 51</p> <p>1 <b>Preston</b></p> <p>2 <b>And so that certainly changed. And I'm sure</b></p> <p>3 <b>we discussed that.</b></p> <p>4 <b>That would have to do -- the only</b></p> <p>5 <b>things that I can think of that would have to</b></p> <p>6 <b>do with what I was being asked to do.</b></p> <p>7 Q. As you sit here today, what is your</p> <p>8 understanding of what you were asked to do?</p> <p>9 <b>A. It's right here in the assignment.</b></p> <p>10 Q. OK. Did you perform any</p> <p>11 investigation or analysis that is not</p> <p>12 contained in this report?</p> <p>13 <b>A. I reviewed the things that are here</b></p> <p>14 <b>that's summarized in this.</b></p> <p>15 <b>I would have -- those are things I</b></p> <p>16 <b>printed out. I may have looked at things</b></p> <p>17 <b>on-line. I may have done things</b></p> <p>18 <b>electronically. I certainly did drafts. I</b></p> <p>19 <b>don't retain drafts. So I don't have those.</b></p> <p>20 <b>Largely summarized here, yes.</b></p> <p>21 Q. So there's no major task that you</p> <p>22 performed that was left out of your report.</p> <p>23 I'm not talking about things that you did that</p> <p>24 may not be reflected.</p> <p>25 For example, did you do a damage</p>	<p style="text-align: right;">Page 53</p> <p>1 <b>Preston</b></p> <p>2 with new opinions, just advise Mr. Brautigam.</p> <p>3 But I do understand that discovery is ongoing.</p> <p>4 <b>A. Right.</b></p> <p>5 Q. Paragraph 7 of your report, is it</p> <p>6 correct that you have not authored any</p> <p>7 publications within the past ten years?</p> <p>8 <b>A. That's true.</b></p> <p>9 Q. A little lower in that same page,</p> <p>10 which is page 3, Preston Exhibit 3, paragraph</p> <p>11 9, does that accurately summarize the opinions</p> <p>12 you're prepared to give in this case?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Your conclusions are based upon the</p> <p>15 materials that you list on pages 4 and 5 as</p> <p>16 the bases for your opinion, correct?</p> <p>17 <b>A. As well as my experience.</b></p> <p>18 Q. OK.</p> <p>19 <b>A. And I would also point to this stack</b></p> <p>20 <b>of documents that I've produced and things</b></p> <p>21 <b>like that. So, you know, I've tried to be</b></p> <p>22 <b>inclusive of, and I will continue to try and</b></p> <p>23 <b>point out things if I overlook something.</b></p> <p>24 Q. That's fine. Section iii in</p> <p>25 paragraph 9 states: "The Proxy contained</p>

14 (Pages 50 to 53)



Page 54

1 Preston  
 2 inadequate disclosure of the inherent risk  
 3 associated with Provident's loan  
 4 securitization activities."  
 5 **A. Correct.**  
 6 Q. In addition to the proxy have you  
 7 reviewed any Provident periodic files?  
 8 **A. Yes.**  
 9 Q. Which periodic filings may be listed  
 10 there?  
 11 **A. I think they're listed. They should**  
 12 **be.**  
 13 Q. OK. You list the forms 10-K, 10-Q,  
 14 8-K and proxy statements filed during 1998  
 15 through 2003; is that correct?  
 16 **A. Yes.**  
 17 Q. Is your opinion limited to the proxy  
 18 statement?  
 19 **A. Uh-huh.**  
 20 Q. You're not opining on whether or not  
 21 the loan securitization activities were  
 22 adequately disclosed in other periodic  
 23 filings.  
 24 **A. That's correct.**  
 25 Q. Have you considered that issue?

Page 55

1 Preston  
 2 **A. Yes.**  
 3 Q. Do you have an opinion on whether or  
 4 not when one combines the proxy statement with  
 5 the other Provident periodic filings there is  
 6 adequate disclosure of the inherent risk  
 7 associated with Provident's loan  
 8 securitization activities?  
 9 MR. BRAUTIGAM: Objection.  
 10 **A. My opinion relates to the proxy,**  
 11 **which I believe is the document that should**  
 12 **contain all the information that a shareholder**  
 13 **needs to make their decisions, and my opinion**  
 14 **is the proxy doesn't contain it.**  
 15 Q. OK. I might have misunderstood you.  
 16 You are not opining one way or the other on  
 17 whether or not the proxy combined with the  
 18 other periodic filings adequately discloses  
 19 the inherent risks, Provident loan  
 20 securitization activities; is that correct?  
 21 MR. BRAUTIGAM: Objection.  
 22 **A. I have not opined on that.**  
 23 Q. Thank you. Section ii of paragraph  
 24 9 states that "the Proxy contained material  
 25 misstatements and omissions regarding the

Page 56

1 Preston  
 2 actions and opinions of some members of OHSL's  
 3 board of directors and the background of the  
 4 transaction, which would have been important  
 5 to OHSL investors in determining whether or  
 6 not to vote in favor of the Merger."  
 7 **A. Right.**  
 8 Q. How did you decide or what was the  
 9 analytical framework in which you reached  
 10 conclusions about what was or was not  
 11 important to OHSL investors?  
 12 MR. BRAUTIGAM: Objection.  
 13 **A. Well, when I knew what had happened,**  
 14 **what actually happened, number one, it's very**  
 15 **obvious that that is important to investors.**  
 16 **It was pretty obvious I thought to do KMK**  
 17 **transaction letters. It was obvious to some**  
 18 **of the Provident directors.**  
 19 **So I guess I relied on my**  
 20 **experience, on information that I gleaned from**  
 21 **the case and on other people's opinions as**  
 22 **well. I looked at what wasn't known, what**  
 23 **should have been known and I looked at**  
 24 **analogous situations.**  
 25 Q. You did not undertake any kind of

Page 57

1 Preston  
 2 analysis survey or anything else to measure or  
 3 quantify the demographics of the OHSL  
 4 investors, what they felt, what they looked  
 5 at, what they relied upon; is that correct?  
 6 MR. BRAUTIGAM: Objection.  
 7 **A. Did I take a survey? No, I did not.**  
 8 Q. Did you speak to any OHSL investors?  
 9 **A. No.**  
 10 Q. Have you ever heard of Janet Nolte?  
 11 **A. No.**  
 12 Q. Have you ever heard of Gary Meier?  
 13 **A. I don't believe so.**  
 14 Q. Do you know what either Mr. Meier or  
 15 Ms. Nolte indicated they looked at, relied  
 16 upon as it relates to the OHSL Provident  
 17 merger?  
 18 **A. No.**  
 19 MR. BRAUTIGAM: Objection.  
 20 Q. I'm sorry?  
 21 **A. No, I don't.**  
 22 Q. Thank you.  
 23 You list various materials in  
 24 paragraph 10 that you looked at, and I note  
 25 this is supplemented by the preceding

15 (Pages 54 to 57)

Page 58

1 Preston  
2 paragraph as well with some of the materials  
3 you referred to this morning.  
4 But generally, with respect to the  
5 materials that are listed in the separate  
6 paragraphs in paragraph 10, who provided, who  
7 selected this information?  
8 **A. I suppose it was a cooperative**  
9 **effort on the part of our office and**  
10 **Mr. Brautigam. Cynthia Jones and I would**  
11 **request things. I think Mr. Brautigam**  
12 **originally sent us a number of things, and**  
13 **then we would request things.**  
14 Q. Of this list do you recall what were  
15 the materials that you requested on a  
16 supplemental basis?  
17 I'm not asking you to take a memory  
18 test, but if you can point to any, I would  
19 appreciate it.  
20 **A. I know Mr. Brautigam fairly**  
21 **automatically supplied us with the legal**  
22 **documents.**  
23 Q. The pleadings?  
24 **A. Yes. The motions, the, um, all**  
25 **that. Some of it obviously, um, all the**

Page 59

1 Preston  
2 **public filings and things we got ourselves.**  
3 **All the news articles.**  
4 You know, in terms of deposition  
5 transcripts, he may have sent some. We may  
6 have asked for all of them. I just don't  
7 know.  
8 Q. All right, that's fine. Did you  
9 read all the deposition transcripts?  
10 **A. I don't recall having -- personally**  
11 **I don't believe I read deposition transcripts**  
12 **of the plaintiffs. I don't recall for sure.**  
13 Q. How about deposition transcripts of  
14 the defendants or the OHSL board members?  
15 **A. Yes.**  
16 Q. Did you read all of them or just  
17 excerpts?  
18 **A. I slogged through all of them.**  
19 Q. What is your understanding of the  
20 current status of the case as it relates to  
21 the class certification status?  
22 **A. I know there are a number of motions**  
23 **outstanding. I guess I don't know what they**  
24 **are.**  
25 Q. Are you aware that the court

Page 60

1 Preston  
2 decertified the class? Did you ever see that  
3 order?  
4 **A. I don't recall. I don't think so.**  
5 Q. You have seen the consolidated  
6 amended complaint.  
7 **A. I have.**  
8 Q. Did anyone send to you copies of any  
9 of the motions to dismiss that were filed in  
10 response to that, to the consolidated amended  
11 complaint?  
12 **A. Well, here's the motion to**  
13 **reconsider the order granting the class, the**  
14 **motion to dismiss in 2000, the brief in**  
15 **opposition of the motion in 2001.**  
16 Q. Those deal with the original  
17 complaint --  
18 **A. Right.**  
19 Q. -- in 2001. And my question is  
20 directed at motions to dismiss the  
21 consolidated amended complaint that would have  
22 been filed in 2004.  
23 MR. BRAUTIGAM: December 31st, 2003.  
24 MR. BURKE: That's when your  
25 complaint was filed. The motion to

Page 61

1 Preston  
2 dismiss was filed in 2004.  
3 Q. Do you remember seeing it?  
4 **A. I don't remember seeing it, no.**  
5 Q. Are you aware that the court has  
6 granted two of the motions to dismiss?  
7 **A. No.**  
8 Q. You're unaware that the court  
9 dismissed Ernst & Young and Keating, Muething  
10 Klekamp; is that correct?  
11 **A. Yes, I guess that is correct.**  
12 Q. Were you ever provided with a copy  
13 of the decision of the court in the class  
14 actions filed in the wake of the Provident  
15 restatement?  
16 MR. BRAUTIGAM: Objection.  
17 **A. No.**  
18 Q. You're not aware that the motion to  
19 dismiss the securities class actions filed in  
20 response to the Provident restatements was  
21 granted at least in part?  
22 **A. No.**  
23 Q. The item number T on the second  
24 page, you indicate that you have reviewed the  
25 expert report of Ross D. Fuerman?

16 (Pages 58 to 61)



Page 62

1 Preston  
 2 **A. Correct.**  
 3 Q. Any other expert reports that you  
 4 have reviewed?  
 5 **A. Since doing this I have seen the**  
 6 **expert reports of the defendants.**  
 7 Q. Have you ever seen the expert report  
 8 of Irv Schoenblum?  
 9 **A. I have not.**  
 10 Q. Have you heard of Mr. Schoenblum?  
 11 **A. I have.**  
 12 Q. Do you understand that he is  
 13 supposedly providing the damages testimony in  
 14 this matter?  
 15 **A. I do.**  
 16 Q. And you have not reviewed his damage  
 17 analysis?  
 18 **A. No.**  
 19 Q. Is there a reason you have not  
 20 reviewed his damage analysis?  
 21 **A. Well, originally I wasn't hired to**  
 22 **do anything regarding damages.**  
 23 Q. I got you.  
 24 **A. I knew Mr. Schoenblum had been hired**  
 25 **to do them. And I didn't rely on his damage**

Page 63

1 **Preston**  
 2 **analysis for anything.**  
 3 Q. Do you have any opinion on the  
 4 validity or invalidity of Mr. Schoenblum's  
 5 analysis as it would relate to damage analysis  
 6 you might perform?  
 7 MR. BRAUTIGAM: Objection, she  
 8 hasn't seen it.  
 9 MR. BURKE: Then she can say no.  
 10 **A. No, I have no opinion.**  
 11 MR. BRAUTIGAM: Objection.  
 12 Q. I take it, without attempting to  
 13 tooting your horn too much, you have been  
 14 involved in litigation assignments for quite a  
 15 few years.  
 16 **A. I have.**  
 17 Q. You did read the affidavit of Ross  
 18 Fuerman.  
 19 **A. I did.**  
 20 Q. In your litigation experience have  
 21 you ever seen an expert accountant attempt to  
 22 opine on whether or not witnesses were lying  
 23 or telling the truth based upon reviewing a  
 24 deposition transcript?  
 25 MR. BRAUTIGAM: Objection.

Page 64

1 Preston  
 2 **A. I don't recall.**  
 3 Q. Have you ever been or agreed to  
 4 serve as an expert witness on whether or not  
 5 based upon a deposition transcript someone was  
 6 lying or telling the truth?  
 7 MR. BRAUTIGAM: Objection.  
 8 **A. Well, I guess there are probably**  
 9 **cases where I have opined that people were not**  
 10 **telling the truth, because they testified to**  
 11 **one thing and I had documentation as to**  
 12 **something else.**  
 13 Q. So you have testified as to that?  
 14 **A. I - I expect that if somebody said**  
 15 **to me that the earnings were \$45 and I had**  
 16 **documentation that they were \$35, I would say**  
 17 **he was not telling the truth.**  
 18 Q. I see what you're saying.  
 19 Paragraph 12. I'm sorry, paragraph  
 20 11 and 12 deals with history, some historical  
 21 facts regarding the activities of OHSL and the  
 22 OHSL board.  
 23 What is the source of the discussion  
 24 in these paragraphs if you remember?  
 25 **A. I think it's the proxy materials.**

Page 65

1 **Preston**  
 2 Q. OK.  
 3 **A. And there's probably deposition**  
 4 **testimony as well.**  
 5 Q. All right. Paragraph 12, the last  
 6 full sentence on this page, "However, between  
 7 July 22 and August 2nd one of OHSL's board  
 8 members resigned, in part, in protest of the  
 9 transaction."  
 10 What is the source of that  
 11 statement?  
 12 **A. Oh, I think it is deposition**  
 13 **testimony.**  
 14 Q. Did Mr. Brautigam ever provide you  
 15 with a copy of Mr. Herron's resignation  
 16 letter?  
 17 **A. I don't believe I've seen it.**  
 18 Q. Are you aware that Mr. Herron's  
 19 formal resignation letter delivered to the  
 20 OHSL board says nothing about resigning in  
 21 protest and to the contrary indicated that he  
 22 didn't have time to devote to his activities  
 23 on OHSL?  
 24 MR. BRAUTIGAM: Objection.  
 25 **A. I understand that, yes.**

17 (Pages 62 to 65)

Page 66

1 Preston

2 Q. Is there a reason why that piece of  
3 information is not included in your  
4 discussion?5 A. What information are you referring  
6 to?7 Q. That Mr. Herron's resignation letter  
8 said nothing about resigning in protest.9 A. I don't think that that was what  
10 wasn't disclosed. I mean, what wasn't  
11 disclosed was that he did resign in part in  
12 protest.

13 Q. And the basis for that is what?

14 A. Mr. Herron's testimony, the fact  
15 that he testified that he called all the other  
16 board members and made certain that they were  
17 aware that that was his reason, all that were  
18 available, and I think it was Mr. Thiemann who  
19 wasn't, and when he was available he made sure  
20 he called him.21 Q. Did you read the testimony of the  
22 other directors on that topic as well?

23 A. I did.

24 Q. And you're aware that they denied  
25 that any such phone calls were made.

Page 67

1 Preston

2 MR. BRAUTIGAM: Objection, that's a  
3 blatant mischaracterization.

4 Q. Are you aware of that?

5 A. No.

6 MR. BRAUTIGAM: Objection.

7 A. No, I'm not aware of that.

8 Q. Have you seen the sequence of  
9 Mr. Herron's deposition in which initially  
10 when asked if he resigned in protest he stated  
11 that I don't know that protest characterizes  
12 it and it was a very low profile kind of  
13 thing?

14 MR. BRAUTIGAM: Objection.

15 Q. Have you seen that testimony?

16 A. I have seen Mr. Herron's testimony  
17 and - now, if you have a copy of it and you  
18 want to refer me to it, I'll be glad to look  
19 at his exact words.20 What I do recall is that Mr. Herron  
21 was a second generation board member, that he  
22 was very upset about this, that he resigned.  
23 He didn't make any money, a lot of money that  
24 he could have made on this deal because he was  
25 so upset, and that he conveyed his unhappiness

Page 68

1 Preston

2 with this. First as part of the board and  
3 then he resigned in protest.4 Q. Are you aware whether or not  
5 Mr. Herron ever communicated his supposed  
6 protest to counsel for OHSL?

7 A. I don't recall that.

8 Q. Do you know whether he ever told  
9 counsel for OHSL to include any such statement  
10 or position in the minutes?11 A. I want to go back to your other  
12 question first. Did he convey his deep  
13 concern about the deal that he was adamantly  
14 opposed to it? Yeah, he voted on July 22nd  
15 against it.16 So did counsel know that he was  
17 against it? Yes, they knew he was against it.18 Q. That's not my question. My question  
19 is did he ever communicate to counsel that he  
20 was supposedly resigning in protest. Do you  
21 know that?

22 MR. BRAUTIGAM: Objection.

23 A. I don't recall that.

24 Q. Do you know whether Mr. Herron ever  
25 told counsel or anyone else to include a

Page 69

1 Preston

2 statement of the supposed protest in the board  
3 minutes relating to the July 22nd vote?

4 A. I don't recall.

5 Q. Are you aware of the 8-K rules with  
6 respect to when a resignation needs to be  
7 disclosed?

8 A. Generally.

9 Q. What is your understanding?

10 A. That it needs to be disclosed when  
11 the board member is adverse to an action the  
12 board is taking.

13 I'm not a lawyer. I couldn't --

14 Q. That's why I asked you, if you're  
15 not familiar.

16 A. Yeah.

17 Q. I mean, item 6 of form 8-K, are you  
18 aware that item 6 of form 8-K requires  
19 disclosure of a resignation of a director  
20 because of a disagreement with a registrant  
21 and only if the individual has furnished the  
22 registrant with a letter describing the  
23 disagreement and requesting that the matter be  
24 disclosed?

25 A. That sounds like you're reading

18 (Pages 66 to 69)

Page 70

1 **Preston**  
2 **directly from the law to me. So --**  
3 Q. You're not familiar with those  
4 requirements.  
5 **A. I'm not a lawyer. I couldn't recite**  
6 **them for you.**  
7 Q. Fair enough. Thank you.  
8 OK, paragraph 14, "On October 25,  
9 1999, OHSL's Chief Executive Officer and  
10 director, Kenneth Hanauer conducted the  
11 meeting of shareholders at which he  
12 recommended the proposed Merger with  
13 Provident."  
14 What is the source of that?  
15 **A. Information that I've read in the --**  
16 **I believe it's in a press release. I can't**  
17 **cite the exact source of this now.**  
18 Q. In particular, I'm concerned with  
19 the statement that on October 25, 1999,  
20 Mr. Hanauer recommended the proposed merger.  
21 Do you recall any source for that?  
22 **A. I would have to go through the**  
23 **documents I've produced.**  
24 Q. Fair enough. The footnote on the  
25 bottom of that page, you're talking about the

Page 72

1 **Preston**  
2 or are you talking about in the proxy  
3 statement?  
4 **A. In the proxy statement.**  
5 Q. You are familiar with the fact that  
6 the proxy statement does list the current  
7 directors at that time or as of I believe it's  
8 August 1st?  
9 **A. I think it's July 31st.**  
10 Q. But you have seen that.  
11 **A. Yes.**  
12 Q. Of the seven, one was absent. And  
13 which director was that? Mr. McKiernan?  
14 **A. I don't recall.**  
15 Q. Of the absent director do you recall  
16 what his position was on the merger?  
17 **MR. BRAUTIGAM: Objection.**  
18 Q. From the other materials you looked  
19 at.  
20 **A. I believe previously he had voted in**  
21 **favor of it.**  
22 Q. Your footnote goes on, "On that day,  
23 Mr. Brinker abstained from casting a vote, so  
24 only five directors voted to approve the  
25 Merger."

Page 71

1 **Preston**  
2 vote of the OHSL directors on August 2nd.  
3 **MR. BRAUTIGAM: That's not --**  
4 **A. No. It's -- it begins on August --**  
5 **on July 22nd.**  
6 Q. Right.  
7 **A. All eight directors were present for**  
8 **a vote on whether to continue negotiations**  
9 **with Provident.**  
10 Q. Right.  
11 **A. Mr. Hanauer abstained. Mr. Herron**  
12 **voted against, and the other six directors**  
13 **voted in favor. Then on August 2nd --**  
14 Q. That's what I'm referring to. I  
15 should have directed your attention to the  
16 third sentence.  
17 **A. OK. And what about that?**  
18 Q. It continues to describe the meeting  
19 on August 2nd. And it says, "After  
20 August 2nd, the composition" or "on August 2nd  
21 the composition of the board of directors had  
22 changed - Mr. Herron resigned, leaving only  
23 seven directors, untold to shareholders."  
24 **A. Correct.**  
25 Q. Untold to shareholders on August 2nd

Page 73

1 **Preston**  
2 Is that a formal abstention by  
3 Mr. Brinker?  
4 **MR. BRAUTIGAM: Objection.**  
5 **A. I don't know whether it was a formal**  
6 **abstention or not. He didn't vote.**  
7 Q. Did you read in the testimony what  
8 Mr. Brinker's position was on the merger?  
9 **MR. BRAUTIGAM: Objection.**  
10 **A. I read Mr. Brinker's testimony. I**  
11 **think that Mr. Brinker had voted in favor of**  
12 **it in July. He didn't vote in August.**  
13 **And the fact is in my opinion, I**  
14 **think in the opinion of any jury you're in**  
15 **front of, unanimous means that everybody voted**  
16 **in favor of it.**  
17 Q. Did Mr. Brautigam provide you with  
18 the portion of Mr. Brinker's testimony, I  
19 believe in the state court action, where he  
20 testified that had he voted that day he would  
21 have voted in favor?  
22 **MR. BRAUTIGAM: Objection.**  
23 **A. I don't recall having seen that.**  
24 **Frankly he didn't vote. You know, whether he**  
25 **would have voted in favor, whether if it was**

19 (Pages 70 to 73)

Page 74

1 Preston  
 2 Mr. McKiernan, for whom -- to the director who  
 3 was out of town, I apologize, I don't remember  
 4 his name. But he didn't vote either.  
 5 So, you know, what he would have  
 6 done and what they did is exactly the reason  
 7 that we have disclosures. And to disclose  
 8 something that I, you know, if they had said  
 9 had Mr. Brinker voted he would have voted yes,  
 10 well, that would have been a disclosure.  
 11 And I will accept for this statement  
 12 that your representation that it was  
 13 Mr. McKiernan who was out of town, if they had  
 14 said, had Mr. McKiernan been here, he would  
 15 have voted yes, that would have been a  
 16 disclosure.  
 17 Had they said, Aha, Mr. Herron  
 18 wasn't here because he resigned because he was  
 19 not in favor of that, that would have been a  
 20 disclosure. But what was said was not a  
 21 disclosure.  
 22 Q. Have you seen the testimony where  
 23 Mr. Brinker talked about the practice of the  
 24 OHSL board that the only time he voted was  
 25 when there was a tie that needed to be broken?

Page 75

1 Preston  
 2 MR. BRAUTIGAM: Objection.  
 3 Q. Are you aware of that testimony?  
 4 A. I -- I -- I've either discussed it  
 5 with Cynthia or I have seen it, I don't know,  
 6 but I'm relatively aware of it, yes.  
 7 Q. Are you familiar with Robert's Rules  
 8 of Order?  
 9 A. Yes.  
 10 Q. Are you familiar with the fact that  
 11 whether or not that kind of a practice is  
 12 consistent or inconsistent with Robert's Rules  
 13 of Order?  
 14 MR. BRAUTIGAM: Objection.  
 15 A. It is consistent.  
 16 Q. That the chairman of a board votes  
 17 to break a tie.  
 18 A. Correct.  
 19 Q. Have you seen the resolution on  
 20 August 27, 1999, where all the OHSL directors,  
 21 including Mr. Brinker and Mr. McKiernan,  
 22 unanimously readopted resolutions approving  
 23 the transaction?  
 24 MR. BRAUTIGAM: Objection.  
 25 A. I don't believe so.

Page 76

1 Preston  
 2 Q. Would that affect your opinion on  
 3 unanimity of the board if in fact with  
 4 everybody present on August 27 that they  
 5 unanimously readopted resolutions affirming  
 6 the transaction?  
 7 A. If that were disclosed  
 8 appropriately, if in fact they had disclosed  
 9 exactly what had happened on August 2nd,  
 10 including Mr. Herron, and the fact that  
 11 Mr. Hanauer was not in favor of it, then,  
 12 regardless of how he voted, that he didn't  
 13 think it was in the best interest of the  
 14 shareholders, then I would say you would have  
 15 had full disclosure.  
 16 Q. When is it your understanding that  
 17 Mr. Hanauer believed or concluded that the  
 18 transaction was not in the best interest of  
 19 the shareholders?  
 20 MR. BRAUTIGAM: Objection.  
 21 Q. Is there any evidence that you have  
 22 as to when that realization supposedly came  
 23 in?  
 24 A. Well, he testified that that was his  
 25 opinion. So I have to say that realization

Page 77

1 Preston  
 2 supposedly is. I don't think, um, that's not  
 3 a word that I would ever use in terms of what  
 4 he testified to.  
 5 Q. Did he testify as to a date?  
 6 A. I don't recall a date.  
 7 Q. And whether it was August of '99,  
 8 subsequent to that, the day of his deposition,  
 9 you don't recall any date being associated  
 10 with that opinion, correct?  
 11 A. I don't.  
 12 Q. You indicate that Mr. Hanauer -- I  
 13 will refer you to the -- in paragraph 16 of  
 14 your report, the last sentence you talk about  
 15 the fact that Mr. Hanauer voted his personal  
 16 shares against the transaction.  
 17 A. Uh-huh.  
 18 Q. Do you know when he voted his  
 19 personal shares against the transaction, when  
 20 he cast his vote?  
 21 A. I recall some discussion about,  
 22 concerning about the fact that he had cast  
 23 them against the, um, you know, I don't recall  
 24 the date.  
 25 Q. Do you know whether it was before

20 (Pages 74 to 77)

Page 78

1 Preston  
 2 the proxy statement was prepared?  
 3 MR. BRAUTIGAM: Objection.  
 4 **A. I don't recall.**  
 5 Q. Do you recall that whether  
 6 Mr. Hanauer ever testified as to when he  
 7 decided how he was going to vote his personal  
 8 shares?  
 9 **A. No.**  
 10 Q. Do you recall Mr. Hanauer testifying  
 11 as to whether or not he told anyone else about  
 12 his decision as to how he was going to vote  
 13 his personal shares?  
 14 **A. I don't recall.**  
 15 Q. Take a look at paragraph 8.  
 16 **A. Which paragraph?**  
 17 Q. Page 8, the end of paragraph 17.  
 18 MR. BRAUTIGAM: You said paragraph 8.  
 19 MR. BURKE: I apologize.  
 20 Q. Page 8, paragraph 17. I just want  
 21 to confirm this maybe for the purpose of the  
 22 remainder of the report.  
 23 When, as you state here and you  
 24 stated previously, you talk about disclosures  
 25 regarding Provident securitization activities,

Page 79

1 Preston  
 2 consistent with what you said before you're  
 3 only talking about the proxy statement itself,  
 4 none of the periodic filings; is that correct?  
 5 **A. That's correct.**  
 6 Q. And that's consistent throughout  
 7 your --  
 8 **A. That's correct.**  
 9 Q. OK, thank you.  
 10 What is the basis for your  
 11 understanding of what you set forth in  
 12 paragraph 18?  
 13 **A. Well, we'll start with the SEC**  
 14 **Regulation C. It's been my experience beyond**  
 15 **that in transactions on which I've worked that**  
 16 **that has been the goal in terms of informing**  
 17 **shareholders. So that the goal is put down by**  
 18 **the SEC and it is then followed.**  
 19 Q. Earlier in questions regarding 8-K  
 20 you indicated that you were not lawyer. Do  
 21 you believe that you have sufficient  
 22 understanding even though you're not a lawyer  
 23 to opine on the requirements of Regulation C?  
 24 **A. I believe I have sufficient**  
 25 **understanding and I have had sufficient**

Page 80

1 Preston  
 2 **experience to opine on the purpose of proxy**  
 3 **materials.**  
 4 Q. And I apologize if I'm reploting old  
 5 ground. The basis for that experience would  
 6 have been your work in what capacity?  
 7 MR. BRAUTIGAM: Objection.  
 8 **A. The last twenty years in securities**  
 9 **litigation and as an investment banker.**  
 10 Q. I know you told me about your work  
 11 on proxy materials as an investment banker.  
 12 In your work as an expert witness  
 13 have you ever been qualified as an expert  
 14 regarding the purpose of proxy materials?  
 15 **A. I think I was. The most recent time**  
 16 **was in the Real Estate Associates case, sure.**  
 17 Q. I think you did mention that before.  
 18 OK. Paragraph 19 carrying over from page 8 to  
 19 page 9 of your report, what is the source of  
 20 the historical discussion in that paragraph?  
 21 **A. Well, I mean, you can look at the**  
 22 **footnote. It's the acts themselves to begin**  
 23 **with. It's probably treatises I have read on**  
 24 **the acts. I think it's common sense.**  
 25 **Certainly there was a great deal of**

Page 81

1 Preston  
 2 **discussion regarding these precise things**  
 3 **around the Enron situation.**  
 4 Q. OK. And your basis for familiarity  
 5 with these concepts is what you talked about  
 6 earlier about your familiarity with Reg C.  
 7 **A. Yes, experience and research.**  
 8 Q. OK. Paragraph 20. "In this case, I  
 9 believe the alleged misstatements and  
 10 omissions contained in the proxy materials  
 11 distributed to OHSL shareholders were  
 12 material, pertained to matters at the heart of  
 13 the transaction, and affected the ultimate  
 14 outcome of the shareholder vote."  
 15 Now, what I would like to focus on  
 16 is the phrase where you say "pertained to  
 17 matters at the heart of the transaction."  
 18 What does that mean?  
 19 **A. They pertain to the financial**  
 20 **matters that were the basis of the**  
 21 **transaction. The currency that was going to**  
 22 **be used to pay the OHSL shareholders, and they**  
 23 **pertain to the opinions of the fiduciaries for**  
 24 **the OHSL shareholders as to whether this was a**  
 25 **good deal for them or not.**

21 (Pages 78 to 81)



Page 82

1 **Preston**  
 2 Q. Specifically, what financial matters  
 3 that you believe were not properly stated are  
 4 you referring to?  
 5 **A. Well, I think we can start with the**  
 6 **financial statements of Provident, which were**  
 7 **clearly misstated. And I think then we can**  
 8 **talk about the lack of clarity and information**  
 9 **regarding the securitization issues.**  
 10 Q. For the reasons you testified  
 11 earlier as to the proxy statement alone.  
 12 **A. Yes.**  
 13 Q. What analysis have you done with  
 14 respect to the impact of the Provident  
 15 restatement on the financials as they were set  
 16 forth in the proxy statement distributed to  
 17 OHSL shareholders?  
 18 **A. Regarding the impact?**  
 19 Q. Yes. Do you want me to rephrase  
 20 that?  
 21 **A. Yes.**  
 22 Q. Have you calculated or attempted to  
 23 calculate precisely how the restatement itself  
 24 would have impacted the numbers that were set  
 25 forth in the Provident OHSL proxy statement?

Page 83

1 **Preston**  
 2 **A. I have not calculated precisely. I**  
 3 **believe they would have had a material and**  
 4 **significant quantity impact for certain.**  
 5 Q. But you have not calculated it.  
 6 **A. I have not calculated it.**  
 7 Q. And you're aware for 1999 there were  
 8 only interim quarterly numbers included in the  
 9 proxy statement, correct?  
 10 **A. That's correct.**  
 11 Q. Are you aware of Provident's  
 12 practices with respect to the auto lease  
 13 securitizations, when they were booked,  
 14 recorded and how that would have impacted  
 15 those quarterly numbers as were reflected in  
 16 the proxy statement?  
 17 MR. BRAUTIGAM: Objection.  
 18 **A. Not specifically.**  
 19 Q. Do you understand that the Provident  
 20 restatement related to some auto lease  
 21 securitization transactions?  
 22 **A. Yes.**  
 23 Q. What is your understanding of what  
 24 that issue was?  
 25 MR. BRAUTIGAM: Objection.

Page 84

1 **Preston**  
 2 **A. I'm going to talk about the first**  
 3 **restatement first, which is that there were**  
 4 **problems. We can go to their press release**  
 5 **and see it better, but there were problems**  
 6 **with their accounting system which improperly**  
 7 **booked and recorded things, and that in fact**  
 8 **those problems extended at the time of the**  
 9 **announcement for over six years.**  
 10 Q. And were there other accounting  
 11 issues other than the recording of financial  
 12 entries that related to the first restatement?  
 13 MR. BRAUTIGAM: Objection.  
 14 **A. I think the best thing to do is look**  
 15 **at the thing -- at the press release, but in**  
 16 **fact there were problems with, that were**  
 17 **discovered when they went to implement a new**  
 18 **system. I saw nothing that would indicate**  
 19 **that those problems were not extant throughout**  
 20 **1999.**  
 21 Q. Are you aware that the issue arose  
 22 with respect to securitization transactions?  
 23 **A. Yes.**  
 24 Q. What are securitization transactions  
 25 in your experience, if you know?

Page 85

1 **Preston**  
 2 **A. Securitization transactions are the**  
 3 **assembling of, in this case, auto liens into a**  
 4 **security to be sold.**  
 5 Q. When that security is sold -- if you  
 6 have an experience, if you don't, that's fine,  
 7 just tell me. When that security is sold what  
 8 happens to those assets as it reflects to the  
 9 balance sheet of the selling company?  
 10 MR. BRAUTIGAM: Objection.  
 11 **A. That depends on the way the**  
 12 **particular structure of the securitization,**  
 13 **what happens to those.**  
 14 Q. What was your understanding of how  
 15 Provident did it back in 1999? If you have  
 16 one.  
 17 **A. In 1999 Provident was treating those**  
 18 **as loans and I don't recall exactly what**  
 19 **happened on the balance sheet.**  
 20 Q. Did you understand that in 1999  
 21 Provident when it securitized its auto loans  
 22 it would sell them and take them off the  
 23 balance sheet?  
 24 **A. I think that's right, yes.**  
 25 Q. Do you understand that prior to a

22 (Pages 82 to 85)

Page 86

1 Preston  
2 securitization transaction of that type, and  
3 as such a sale, that those auto loans would  
4 remain on the balance sheet?

5 **A. Correct.**

6 Q. Do you understand that the  
7 accounting issues that arose dealt with  
8 accounting for the securitization or  
9 securitized transactions?

10 **A. Yes, they basically dealt with the**  
11 **recourse that the purchaser of the securitized**  
12 **loans would have and did that mean that they**  
13 **actually, um, the liability for those or the**  
14 **asset had been transferred.**

15 Q. Have you seen any testimony in this  
16 case as to when Provident securitized the auto  
17 loans in 1999?

18 **A. I don't believe so.**

19 Q. Has anyone ever indicated to you  
20 that what happened was Provident securitized  
21 those auto loans December 31, 1999?

22 **A. No.**

23 Q. Would that indicate to you that if  
24 securitization transactions were not done  
25 until the end of the year that interim

Page 88

1 Preston  
2 financials, the interim financials in March  
3 and June of 1999 should have reflected what  
4 Provident intended to do or should have  
5 reflected what actually the historical results  
6 were?

7 MR. BRAUTIGAM: Objection.

8 **A. I think the purpose of the proxy**  
9 **statement and the purpose of obtaining a**  
10 **fairness opinion is to present a fair picture**  
11 **of the company.**

12 So if they had said, Oh, by the way,  
13 we improperly booked these in 1998 and we're  
14 going to improperly book them in 1999, then  
15 the fact that the interim financials might not  
16 include those improper bookings, but they  
17 said, Oh, we're going to continue to do it, I  
18 think would have been the equivalent of  
19 correctly reflecting that information.

20 Q. Is it your testimony that anyone at  
21 Provident knew in 1998 or 1999 the problems  
22 that ultimately were discovered?

23 MR. BRAUTIGAM: Objection.

24 Q. Do you know that?

25 **A. I don't have any opinion on that.**

Page 87

1 Preston  
2 financials would reflect to some extent the  
3 actual loans in their original form?

4 MR. BRAUTIGAM: Objection.

5 **A. It wouldn't reflect the intent. I**  
6 **mean, the fact is stock prices are built on**  
7 **two things. They're built on the current**  
8 **situation and the anticipation of the future,**  
9 **which is exactly what happens when this is**  
10 **ultimately announced.**

11 It's announced that, Oh, by the way,  
12 we have got to change this, and it's going to  
13 affect the future as well.

14 So the fact that they hadn't done  
15 the actual securitization, but they intended  
16 to, is reflected in the anticipated earnings  
17 of the company, which are in fact realized  
18 because they do this improper accounting.

19 So the fact that it may have  
20 occurred at the end of the year, if in fact  
21 that was always their intent to do it and  
22 that's what they told people, it affected the  
23 stock price regardless of when it actually  
24 took place.

25 Q. So is it your testimony that the

Page 89

1 Preston  
2 Q. We sort of got off on this tangent.  
3 I apologize. You have not gone back to  
4 calculate precisely how the interim 1999  
5 numbers would have been affected, if at all,  
6 by the restatement activities; is that  
7 correct?

8 MR. BRAUTIGAM: Objection. You just  
9 asked that question.

10 **A. I surely would have liked Provident**  
11 **to have supplied the information to do that.**

12 Q. We're on paragraph 20, page 9 of  
13 your report. The last concept is that, and  
14 I'm paraphrasing here, the alleged  
15 misstatements and omissions contained in the  
16 proxy materials distributed to OHSL  
17 shareholders affected the ultimate outcome of  
18 the shareholder vote.

19 **A. Uh-huh.**

20 Q. What is the basis for that?

21 **A. Research I have done on the effects**  
22 **of those, of that information.**

23 Q. How did you quantify or measure or  
24 determine what the ultimate outcome of the  
25 shareholder vote would have been had these

23 (Pages 86 to 89)



Page 90

1 Preston  
 2 matters been correctly stated in your opinion?  
 3 **A. I would say that if you look further**  
 4 **in my report you will see that it would in all**  
 5 **likelihood would have affected the exchange**  
 6 **ratio. At the very least it might have**  
 7 **triggered the walkaway, that the information**  
 8 **regarding Mr. Herron and the shareholder or**  
 9 **the board of directors' vote and the other**  
 10 **information that was withheld would have --**  
 11 **they only needed a handful of votes to change**  
 12 **this. In my opinion in all likelihood those**  
 13 **votes would have changed.**  
 14 **Q. I understand that and I understand**  
 15 **how you would opine that those matters would**  
 16 **have affected the shareholder votes.**  
 17 **What you state here though is that**  
 18 **it affected, in other words, did affect. So**  
 19 **my question is, how did you measure that, how**  
 20 **did you determine that it in fact affected the**  
 21 **shareholder vote?**  
 22 **A. I look for analogous situations. I**  
 23 **show the situation in my report regarding the**  
 24 **Hewlett-Packard situation, Hewlett-Packard a**  
 25 **fairly similar situation in that you have**

Page 91

1 Preston  
 2 **somebody who is very associated with the**  
 3 **company who is unhappy with the merger,**  
 4 **somebody who would have been in a relatively**  
 5 **similar position to that of Mr. Hanauer and**  
 6 **Mr. Herron. Excuse me.**  
 7 **And that moved the stock price and**  
 8 **caused a great deal of turmoil in the stock as**  
 9 **a result. I thought that that was a good**  
 10 **demonstration of how the vote could be**  
 11 **affected.**  
 12 **Q. What else ultimately happened in the**  
 13 **Hewlett-Packard/Compaq vote?**  
 14 **A. The deal went through.**  
 15 **Q. And it didn't affect the vote, did**  
 16 **it?**  
 17 **MR. BRAUTIGAM: Objection.**  
 18 **A. Oh, it affected the price of the**  
 19 **stock tremendously. The movement of that**  
 20 **stock price showed exactly how important the**  
 21 **opinions of people who are well know and**  
 22 **associated with the company, what a difference**  
 23 **that made.**  
 24 **Q. But at the end of the day the**  
 25 **shareholders did not follow Mr. Hewlett's**

Page 92

1 Preston  
 2 recommendation to disapprove the transaction,  
 3 correct?  
 4 **MR. BRAUTIGAM: Objection, blatant**  
 5 **mischaracterization.**  
 6 **Q. Is that correct?**  
 7 **A. You know, at the end of the day we**  
 8 **don't know what they would have done had he**  
 9 **just gone along with them. What we do know is**  
 10 **how much the stock price moved as a result of**  
 11 **his involvement.**  
 12 **And that to me is an outstanding**  
 13 **example of it, and I think we have a number of**  
 14 **analysts who looked at it and said, you know,**  
 15 **this is going to be a whole different race in**  
 16 **terms of this vote than it would have been if**  
 17 **Mr. Hewlett had not voiced his objection.**  
 18 **So I think that's an outstanding**  
 19 **example of exactly what happens. It was a**  
 20 **very, very tight race as a result of his**  
 21 **objection. Did they pass it? Yes. But**  
 22 **everybody thought it would pass easily until**  
 23 **he objected.**  
 24 **Q. That's my question. Did the**  
 25 **shareholders ultimate pass it? That's all I'm**

Page 93

1 Preston  
 2 saying.  
 3 **A. Yes, but it wasn't like everybody**  
 4 **expected it to be a tight race before his**  
 5 **objection. In this case we've got a hair's**  
 6 **breadth of a race with nobody knowing about**  
 7 **the objection.**  
 8 **Q. At this point based upon your**  
 9 **experience as an investment banker and**  
 10 **evaluation consultant are you, do you believe**  
 11 **that Hewlett-Packard and OHSL are comparable**  
 12 **companies?**  
 13 **A. I think that, comparable companies?**  
 14 **They're certainly -- they're in different**  
 15 **businesses. They're different sizes.**  
 16 **It means that in many respects the**  
 17 **people who ran OHSL were much better known in**  
 18 **their community and to their shareholders than**  
 19 **Mr. Hewlett was to his shareholders. People**  
 20 **knew these people on an individual basis. So**  
 21 **their opinions probably carried more weight**  
 22 **than Hewlett's did.**  
 23 **Q. Which individual are you talking**  
 24 **about?**  
 25 **A. Hanover and Herron. And especially**

24 (Pages 90 to 93)